

IR NO. 86-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF HIGHER EDUCATION),

Petitioner,

-and-

Docket No. SN-86-11

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Respondent.

SYNOPSIS

In a Scope of Negotiations petition before the Public Employment Relations Commission, the State of New Jersey, Department of Higher Education, seeks to restrain arbitration on a grievance brought by the Communications Workers of America pending a full Commission decision. The State further seeks a temporary restraint of arbitration pending a Commission decision.

The State, through the Department of Higher Education, eliminated a tuition waiver program for its employees pursuant to N.J.S.A. 18A:64-13 which mandates that students pay a minimum tuition fee. The union does not question the State's right to unilaterally take such action. However, it argues that the State did have an obligation to restructure this program in a manner that does not violate N.J.S.A. 18A:64-13.

The issue of the State's obligation to restructure this benefit is clearly severable from the preemptive nature of N.J.S.A. 28A-64-13 and is appropriate for arbitration. The request for a temporary restraint is denied.

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Appearances:

For the Petitioner
Irwin I. Kimmelman, Attorney General
(Michael L. Diller, Deputy Attorney General)

For the Respondent
Steven P. Weissman, Esq.

INTERLOCUTORY DECISION

On July 31, 1985, the State of New Jersey, on behalf of the Department of Higher Education filed a Petition for Scope of Negotiation determination with the Public Employment Relations Commission ("Commission"). The State seeks a permanent restraint of binding arbitration of a grievance filed by the CWA. The grievance contests action taken at Montclair State College to eliminate, without negotiations, a tuition waiver program that had long been in effect. This tuition waiver program was not part of the collective negotiations agreement between the State and the CWA.

Subsequent to the filing of the petition and pursuant to N.J.A.C. 19:14-3.10, the State also filed an application for interim relief with a proposed order to show cause seeking a temporary restraint of arbitration pending a final decision in this matter. Arbitration is scheduled for October 16th, both parties waived oral argument and briefs were submitted to me by October 7th.

The State admits that it had eliminated the tuition waiver program. It took this action, however, pursuant to an Attorney General's opinion which holds that a state college may not waive tuition for its employees. This decision was based on the language of N.J.S.A. 18A:64-13 which provides that:

Pupils in each State College who are residents of New Jersey shall be required to pay each year a minimum tuition fee of \$50.00 and non-residents of the State shall pay an additional fee. Such fees and any increase of the minimum tuition fee shall be determined by the Board of Higher Education.

The State goes on to argue that:

As our Supreme Court has held in The State Supervisory Employees Advisory Association, 70 N.J. 5481 (1978): ...The adoption of any specific statute or regulation setting or controlling a particular term or condition of employment will preempt the inconsistent provision of a negotiated agreement governing a previously unregulated matter. It follows, therefore, that programs which have been established without negotiations must also be terminated where they are inconsistent with the authority of the public body which establishes the program. In this instance, tuition waiver is such a program and they may not be reinstated by the State.

We emphasize that the scope of this case is limited to the issue of whether program tuition waivers must be reestablished pursuant to an existing contract. In other words, this is not a case relating to the issue of whether some alternative to tuition waivers could be negotiated between the State and the CWA.

It is noted, however, that the contract between the State and the CWA provides at Article XXXVI, A Tuition Refund:

Where a department or organizational unit of the State has established a tuition refund program, said department or organizational unit shall provide the union with public description of such program, if available.

The State does not contest the continuing viability of tuition reimbursement plans where they exist in other institutions in the state college system.

The CWA argues that: "In determining whether the grievance filed by the CWA in this matter is arbitrable, it is necessary to distinguish between the actual 'benefit' or past practice which the CWA maintains was unilaterally altered and the 'mechanism' by which that benefit was provided." That is, the CWA takes a position that whether the employees in question receive a benefit of a tuition waiver or a tuition reimbursement is of no moment to it. The CWA contends that it is not significantly different to have the employer pay for a course and then be subsequently reimbursed by the State or have the course costs waived by the State so money does not change hands. Accordingly, it argues that, once the tuition waiver program

was declared unlawful, the State had an obligation to effectively continue this program under the terms of the past practice providing for effectively free tuition.

The standard in determining whether to grant interim relief is settled. The charging party must establish a substantial likelihood of success on its legal and factual allegations, it must demonstrate that irreparable harm will occur if the requested relief is not granted, e.g., Hopatcong Board of Education and Hopatcong Education Association, I.R. No. 85-10, 11 NJPER 151 (¶16066 1985), Alexandria Twp. Board of Education, I.R. No. 84-5, 10 NJPER 1 (¶15000 1983).

I first consider whether the State has established the likelihood of success upon the merits. I find that it has not. I, of course, do not address the merits of the grievance or the merits of the State's grievance defense. Whether the State has a right to abolish the program without substituting a lawful alternative is for the arbitrator to decide. Ridgefield Park Board of Education, 78 N.J. 144, 154 (1978).


The union here does not challenge the State's position that the statute in Title 18A preempts the previous policy at Montclair State College concerning tuition waiver. Rather it argues that the college had an obligation to simply restructure this program in a manner that does not violate N.J.S.A. 18A:64-13.

The question whether the parties' past practice created an obligation on the State to restructure this benefit, as argued by the union, is clearly severable from and does not undermine the preemptive nature of N.J.S.A. 18A-64-13. See City of Elizabeth v. IAFF Local 2040, 198 N.J. supra 382 (1985), 11 NJPER 175 (¶16076 1985).

Accordingly, I will deny the State's application for an interim restraint and allow the arbitrator to determine whether the State had an obligation to provide a substantially equivalent benefit to the employees at Montclair State College.

ORDER

The State's application for interim relief seeking a stay of arbitration is denied.


Edmund G. Gerber
Commission Designee

Dated: October 11, 1985
Trenton, New Jersey